Headquarters U.S. Air Force

Integrity - Service - Excellence

48th AFMS Medical Logistics Symposium, Nashville, TN

Medical Finance and Fiscal Law

U.S. AIR FORCE

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5 August 2004
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U.S. AIR FORCE

Life In Washington, D.C.

"Outside of the killings, Washington has one of the lowest crime rates in the country."

-- Former D.C. Mayor, Marion Barry

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Overview

- Why should I *(a Logistician)* care about fiscal law?
- Important Concepts
  - Defense Health Program Appropriation
  - Budget Authority – What is it?
  - Obligated vs Expensed
  - The Most Important Rule
- Limitations on Authority
  - Purpose, Time & Amount
- Antideficiency Act (ADA)

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Fiscal (or Appropriations) Law

That body of law which governs the availability and use of federal funds

Appropriations Law

U.S. Constitution:

"No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."

Article 1, Section 9

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"So What?"

So What?

Concepts:

- DHP
- Authority
- Obligations
- "The Rule"

Limits on:

- Purpose
  Necessary
  Not prohibited
  Augmenting
- Time
- Amount
  ADA

- **Violations of fiscal law are becoming more common**
  - **New Environment: More decentralization of financial controls**
    - **Increased use of the Government Purchase Cards and Military Interdepartmental Purchase Requests (MIPRs)**
    - **More people without appropriations law knowledge are obligating funds**
  - **GAO, DoDIG, AFAA "High Interest Items:"**
    - **GAO "Exposure Draft:" *"Auditing and Investigating the Internal Control of Government Purchase Cards" (May 2003)***
    - **GAO Testimony: *"Federal Budget: Opportunities for Oversight and Improved Use of Taxpayer Funds." (June 18, 2003)***

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"So What?"

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- **GAO, DoDIG, AFAA "High Interest Items" (Con't)**
  - **AF Audit Agency: *"Use and Control of Military Interdepartmental Purchase Requests (MIPRs)"* (Dec 2000)**
  - **DoDIG: *"Army Healthcare Enterprise Management System."* (Jan 2001)**
  - **DoDIG Audit Announcement: *"DoD Controls Over Purchase Cards in the Military Health System."* (May 2003)**
  - **DoDIG Draft Audit: *"Non-TRICARE Medical Service Contracts"* (Feb 2004)**
  - **Shane Harris, *Government Executive Magazine,* "Fast but Loose: GSA's Federal Technology Services" (15 Jan 04), pp 43-49.**
- **Resource Advisors (RA) and Commanders must be "in the loop" on purchases and contracting issues**
  - ***Internal Management Controls***
  - **RA's Job: Protect your commanders**

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Fiscal Law Concepts

So What?

Concepts:

- **DHP**
- **Authority**
- **Obligations**
- **"The Rule"**

Limits on:

- Purpose
  - Necessary
  - Not prohibited
  - Augmenting
- Time
- Amount
  - ADA

Before you can understand fiscal law, you must understand these concepts:

- The Defense Health Program (DHP) Appropriation
- Budget Authority (& how it flows)
- The difference between Obligated & Expensed
- The "Most Important Rule"

U.S. AIR FORCE

Defense Health Program Appropriation

DHP: Three Appropriations in C

So What?

Concepts:

- **DHP**
- Authority
- Obligations
- "The Rule"

Limits on:

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  - Necessary
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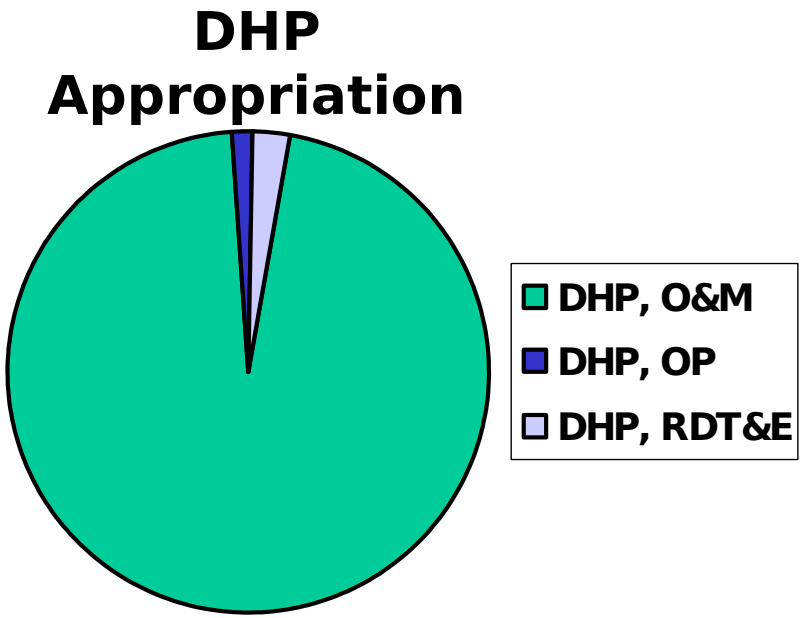
AF, O&M

AF, RDT&E

AF, Other Procurement



IMPORTANT POINT TO REMEMBER: **The DHP Appropriation is a separate appropriation from the Wing's (AF, O&M) appropriation.**

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Concept: Budget Authority

So What?

Concepts:

- DHP
- **Authority**
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Limits on:

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- **Congress appropriates "Budget Authority" (not mo**
- **Budget Authority – The authority provided by law to incur financial obligations that will result in outlays from the General Fund of the U.S. Treasury**
- **What Law?**

  The Defense Appropriations Act
- **Congress provides agencies the authority to draw funds from the U.S. Treasury (the "checking account") with strict limits on:**
  - ✓ **Purpose**
  - ✓ **Time**
  - ✓ **Amount**

U.S. Treasury

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Defense Appropriations Act for FY 2004 (P.L. 108-87)

TITLE VI

OTHER DEPARTMENT OF DEFENSE PROGRAMS

DEFENSE HEALTH PROGRAM

For expenses, not otherwise provide for, for medical and health care programs of the Department of Defense, as authorized by law, $15,730,013,000, of which $14,914,816,000 shall be for Operation and maintenance, of which not to exceed 2 percent shall remain available until September 30, 2005; and of which $7,420,972,000 shall be available for contracts entered into under the TRICARE program; of which $328,826,000, to remain available for obligation until September 30, 2006, shall be for Procurement; and of which $486,371,000, to remain available for obligation until September 30, 2005, shall be for Research, development, test and evaluation.

PURPOSE

TIME

AMOUNT

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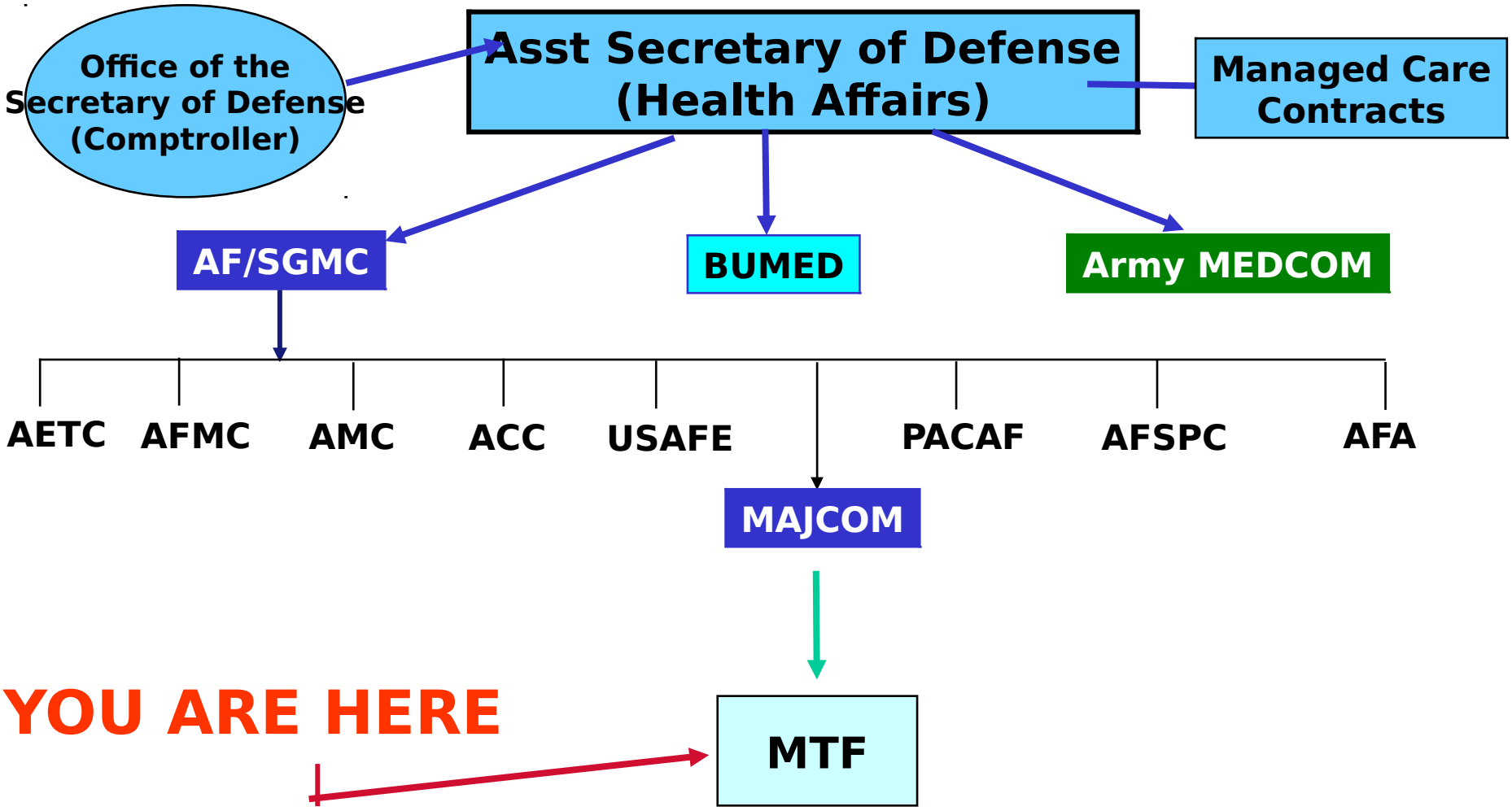
Budget Authority



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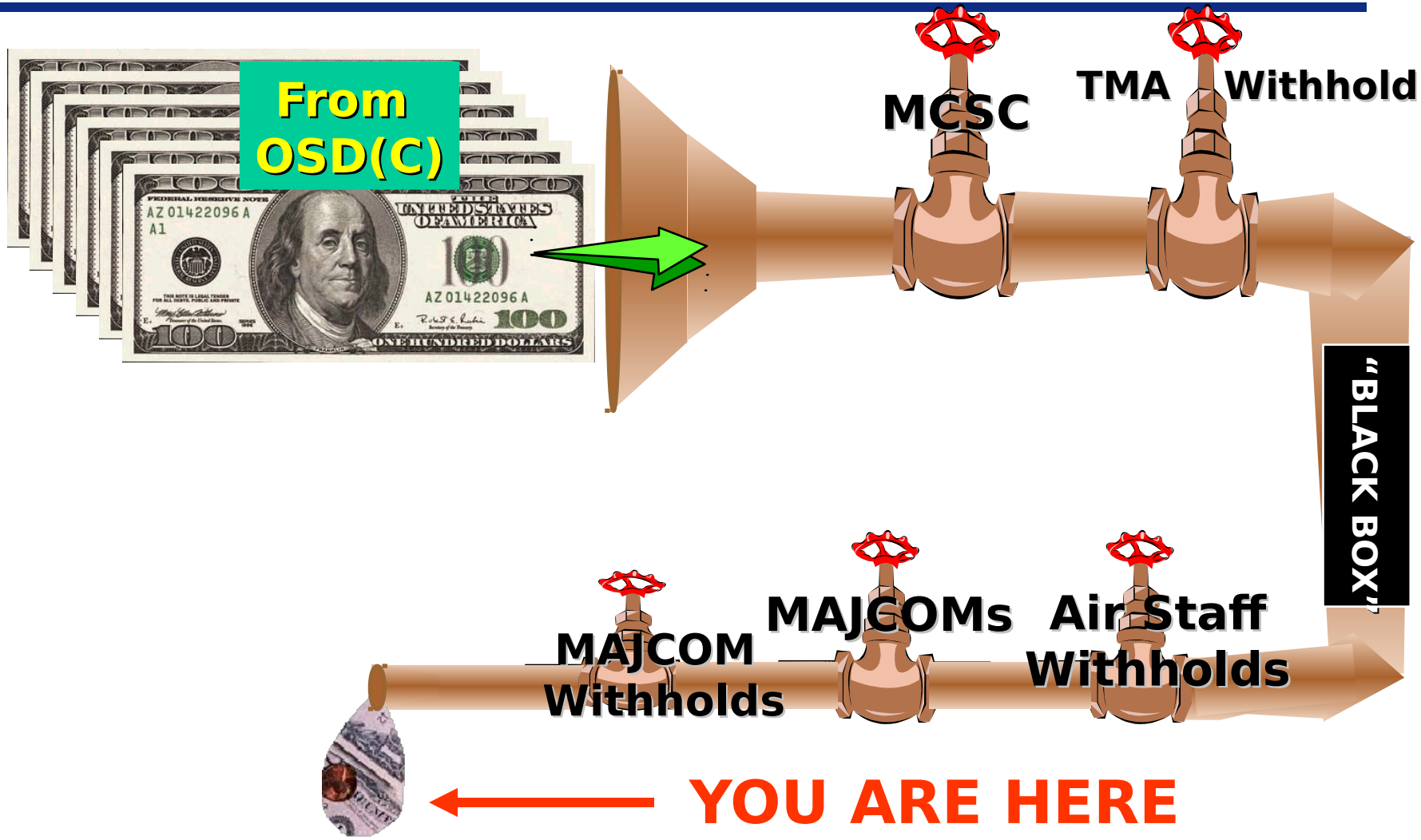
Fiscal Reality



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Obligated vs Expensed

So What?

Concepts:

- DHP
- Authority

Obligations

- "The Rule"

Limits on:

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STAGES of ACCOUNTING

1. **Committed:** An administrative reservation of funds currently available to provide for anticipated obligations
2. **Obligated but not Received:** Budget authority formally reserved for purchase--Goods or services ordered but not yet received.
3. **Received but not Paid:** Received the goods or services but not yet paid
4. **Received and Paid (Expensed):** Actual disbursement has been made from the U.S. Treasury

U.S. AIR FORCE

Obligated vs Expensed

So What?

Concepts:

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- **Obligations**
- "The Rule"

Limits on:

- Purpose
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	COMM	Obligated	Received	Paid	Gross Obs
			← Expensed →		
FY 04	$150K	0	0	0	0

Assumption: O&M, FY 2004, single-year appropriation

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Obligated vs Expensed

So What?

Concepts:

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- **Obligations**
- "The Rule"

Limits on:

- Purpose
  - Necessary
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- Amount
  - ADA

A + B + C = D

	COMM	Obligated	Received	Paid	Gross Obs
			← Expensed →		
FY 04	$150K	$0	$0	$0	$0
FY 04	**$0K**	**$100K**	**$0**	**$0**	**$100K**

Assumption: O&M, FY 2004, single-year appropriation

U.S. AIR FORCE

Obligated vs Expensed

So What?

Concepts:

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  - ADA

A + B + C = D

	COMM	Obligated	Received	Paid	Gross Obs
			← Expensed →		
FY 04	$150K	$0	$0	$0	$0
FY 04	$0K	$100K	$0	$0	$100K
FY 04	**$0K**	**$75K**	**$25K**	**$0**	**$100K**

Assumption: O&M, FY 2004, single-year appropriation

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Obligated vs Expensed

So What?

Concepts:

- DHP
- Authority
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A + B + C = D

	COMM	Obligated	Received	Paid	Gross Obs
			← Expensed →		
FY 04	$150K	$0	$0	$0	$0
FY 04	$0	$100K	$0	$0	$100K
FY 04	$0	$75K	$25K	$0	$100K
FY 04 (+30 days)	**$0**	**$75K**	**$0**	**$25K**	**$100K**

Assumption: O&M, FY 2004, single-year appropriation

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Obligated vs Expensed

So What?

Concepts:

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A + B + C = D

	COMM	Obligated	Received	Paid	Gross Obs
			← Expensed →		
FY 04	$150K	$0	$0	$0	$0
FY 04	$0	$100K	$0	$0	$100K
FY 04	$0	$75K	$25K	$0	$100K
FY 04 (+30 days)	$0	$75K	$0	$25K	$100K
FY05	**$0**	**$5K**	**$0**	**$95K**	**$100K**

Assumption: O&M, FY 2004, single-year appropriation

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The "Most Important Rule"

So What?

Concepts:

- DHP
- Authority
- Obligations
- "The Rule"

Limits on:

- Purpose
  Necessary
  Not prohibited
  Augmenting
- Time
- Amount
  ADA

If it doesn't say you can . . . .

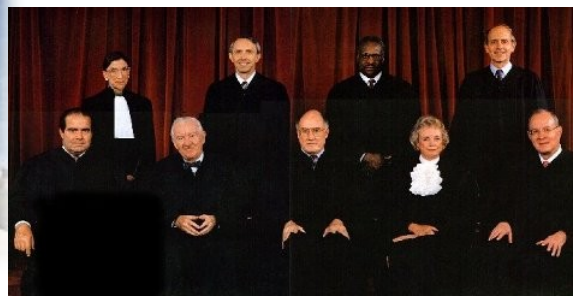
you can't.

The "Most Important Rule"

U.S.Supreme Court Ruling:

"The established rule is that the expenditure of public funds is proper only when authorized by Congress, *NOT* that public funds may be expended unless prohibited by Congress."

United States v. MacCollom
426 U.S. 317 (1976)



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The "Most Important Rule"

So What?

Concepts:

- DHP
- Authority
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- "The Rule"

Limits on:

- Purpose
  - Necessary
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  - ADA

- The "burden of proof" is on the individual to show that the law says they CAN obligate appropriated funds
- For every "general rule" there are numerous exceptions
- Find a precedent (i.e., similar type purchase that IS approved)
- Questions with regards to the "Purpose Statute" are the most difficult

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Fiscal Law Concepts

So What?

Concepts:

- DHP
- Authority
- Obligations
- "The Rule"

Limits on:

- Purpose
  - Necessary
  - Not prohibited
  - Augmenting
- Time
- Amount
  - ADA

Before you can understand fiscal law, you must understand these concepts:

- Appropriations (what they are)
- Budget Authority (& how it flows)
- Difference between Obligated & Expensed
- An Appropriation's "Period of Availability"
- The U.S. General Accounting Office (GAO)
- The "Most Important Rule"

Limitations on Authority

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So What?

Concepts:

- DHP
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Limits on:

- **Purpose**
  - Necessary
  - Not prohibited
  - Augmenting
- **Time**
- **Amount**
  - ADA

- **An agency may obligate and expend appropriations only for a proper purpose [PURPOSE]**
- **An agency may obligate only within the time limits applicable to the appropriation [TIME]**
  - **Appropriations are only available for the *bona fide need* (BFN) of an appropriation's period of availability**
- **An agency must obligate funds within the amounts appropriated by Congress and formally distributed to the agency [AMOUNT]**

PURPOSE - 3 Test Rule

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So What?

Concepts:

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Limits on:

- **Purpose**
  - **Necessary**
  - **Not prohibited**
  - **Augmenting**
- Time
- Amount
  - ADA

- **To satisfy the purpose of law, an expense must:**

  1. **Be necessary and logically connected to the appropriation ("Necessary Expense Rule")**
  2. **Not be prohibited by law**
  3. **Not otherwise be provided for by another appropriation**

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PURPOSE

So What?

Concepts:

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Limits on:

- **Purpose**
  - **Necessary**
  - **Not prohibited**
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  - ADA

- **To satisfy the purpose of law, it doesn't matter if the purchase:**
  - **Saves Money**
  - **Is Fair**
  - **Is Logical**
  - **Is a Good Idea**
  - **Was first approved by the Commander**
  - **Has always been made in the past**

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PURPOSE: Necessary Expense

So What?

Concepts:

- DHP
- Authority
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- "The Rule"

Limits on:

- **Purpose**
  - **Necessary**
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- **"Necessary Expense:"** The expenditure of an appropriation must be for a particular statutory purpose, or **"necessary and incident"** and **"contributes materially"** to the proper execution of the general purpose of the appropriation.
- Establishing "necessary and incident:" A lot harder than it sounds
- **Recommendation:** If in doubt, ask first
- Regardless of whether "legal" or not, consider whether purchase is "mission essential" or in your commander's best interest -- perception is everything

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PURPOSE: Questionable Expenses

So What?

Concepts:

- DHP
- Authority
- Obligations
- "The Rule"

Limits on:

- **Purpose**
  - Necessary
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  - ADA

Typical Questionable Expenses

- **In general, appropriated funds (APFs) cannot be used to purchase:**
  - **Food & Entertainment**
  - **Clothing**
  - **Personal-type items (mementos, business cards, "commander's coins, T-shirts, awards, licenses and certificates, office furnishings, etc.)**
- **For every rule, there are always exceptions**
- **Significant because they deal with the public's perception of how the Government spends the taxpayers' dollars**

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PURPOSE: Questionable Expenses

So What?

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Food and Entertainment: In general, food and drink, refreshments, receptions, banquets, music, are prohibited with the following exceptions:

- **Basic Allowance for Subsistence (BAS)**
- **Per Diem for Travel away from Permanent Duty Station (PDS)**
- **Food for patient care is usually fine if it is medically necessary**
  - **Blood donor center, HAWC cooking demonstrations (See AFMAN 44-144, Nutritional Medicine Management)**
- **Conferences & Award Ceremonies: "Light Refreshments"**
  - **Does not include Retirement or Promotion ceremonies**

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PURPOSE: Questionable Expenses

So What?

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Clothing: Buying clothing for individual employees generally is prohibited (except for the following exceptions):

- **Military Clothing Allowance**
- **Occupational Safety Clothing or Equipment if:**
  - **(1) the item must be "special" and not part of the ordinary and usual clothing an employee may reasonably be expected to provide for themselves**
  - **(2) the item must be for the benefit of the government**
  - **(3) the employee must be engaged in hazardous duty**
- **Occupational Safety & Health Administration (OSHA) requirement**
- **Mandatory Wear Items (listed in Table of Allowances 016)**
  - **Listed by AFSC; Still commanders' option ("may purchase with unit funds")**

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PURPOSE: Questionable Expenses

So What?

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  - ADA

"Personal Expense-type Items": Generally prohibited.

Examples:

- **Workplace Food Storage & Preparation Equipment is a personal expense (refrigerators, coffee pots, microwaves, dishes, etc.)**
- **Business cards – personal expense (but a few exceptions).**
- **State Licensure fees – personal expense (but a few exceptions)**
- **Gifts and "mementos" – cannot use APFs**
- **Awards (plaques and coins) – Must be for an authorized and recurring recognition program (AFI 36-XXX series)**
  - **The Army Lawyer, *"Commanders' Coins: Worth Their Weight in Gold?"***

PURPOSE: Augmentation

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So What?

Concepts:

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  - ADA

- **Two types of Augmentation:**

1. **Using funds from one appropriation to pay costs associated with the purpose of another appropriation—most common**

Example: Using MDG funds to pay WRM costs

Example: Base Civil Engineering overcharging MDG

2. **Miscellaneous Receipts Statute: Retaining government funds from another source**

In general, miscellaneous receipts must be deposited into the General Fund of the U.S. Treasury

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PURPOSE & the AFMS

So What?

Concepts:

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Limits on:

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  - Necessary
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- **Purpose Problems in the DHP:**
  - Government Purchase Card [Necessary Expense]
  - "Marketing" materials, commander's coins, and other mementos, gifts [Necessary Expense]
  - Combat Support & WRM items [Augmentation]
    - Also, other "base support" items
    - OSI investigations, patient taxi rides, "TRICARE" mailings, confinement, "Quality of Life" funds, ambulance leasing, Automatic External Defibrillators (AEDs), postage, and many more….

- **The Financial Manager's Rule #2:**

  Never pay for something that someone else can pay for

TIME

So What?

Concepts:

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Limits on:

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- **In general:**
  - **Agencies may not obligate funds before they are authorized and appropriated**
  - **Agencies may not incur new obligations after the period of availability ends**
  - **Appropriations are presumed to be one-year funds, unless expressly stated otherwise**
  - **Different appropriations have different periods of availability**

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TIME: Bona Fide Need (BFN) Rule

So What?

Concepts:

- DHP
- Authority
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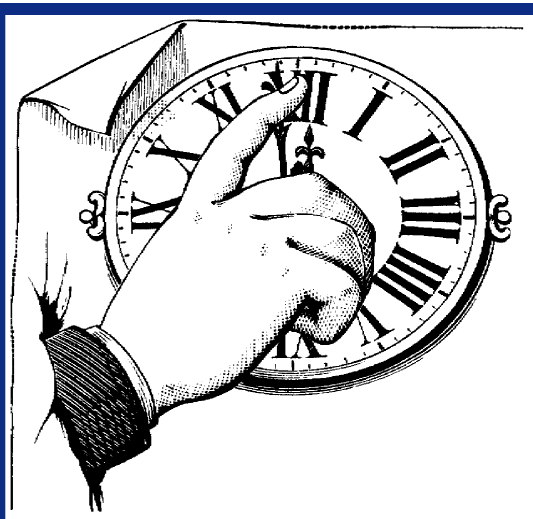

- **Bona Fide Need -- The balance of an appropriation is available only for obligation during its period of availability [31 U.S.C. § 1502(a)]**

- **The expense must be a bona fide need of the agency during the appropriation's period of availability for obligation**
- **Congress sets the time limits**
- **The balance of an appropriation may be expensed beyond its period of availability**

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BFN: Application and Exceptions

So What?

Concepts:

- DHP
- Authority
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Limits on:

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  ADA

- **Supplies**
  - **General rule**
  - **Lead-Time Exception**
  - **Stock Level Exception**
- **Services**
  - **General Rule**
  - **Severable Services**
  - **Nonseverable Services**

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BFN: Application and Exceptions

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- **Supplies**
  - General rule
  - Lead-Time Exception
  - Stock Level Exception
- **Services**
  - General Rule
  - Severable Services
  - Nonseverable Services

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BFN: Supplies

So What?

Concepts:

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Limits on:

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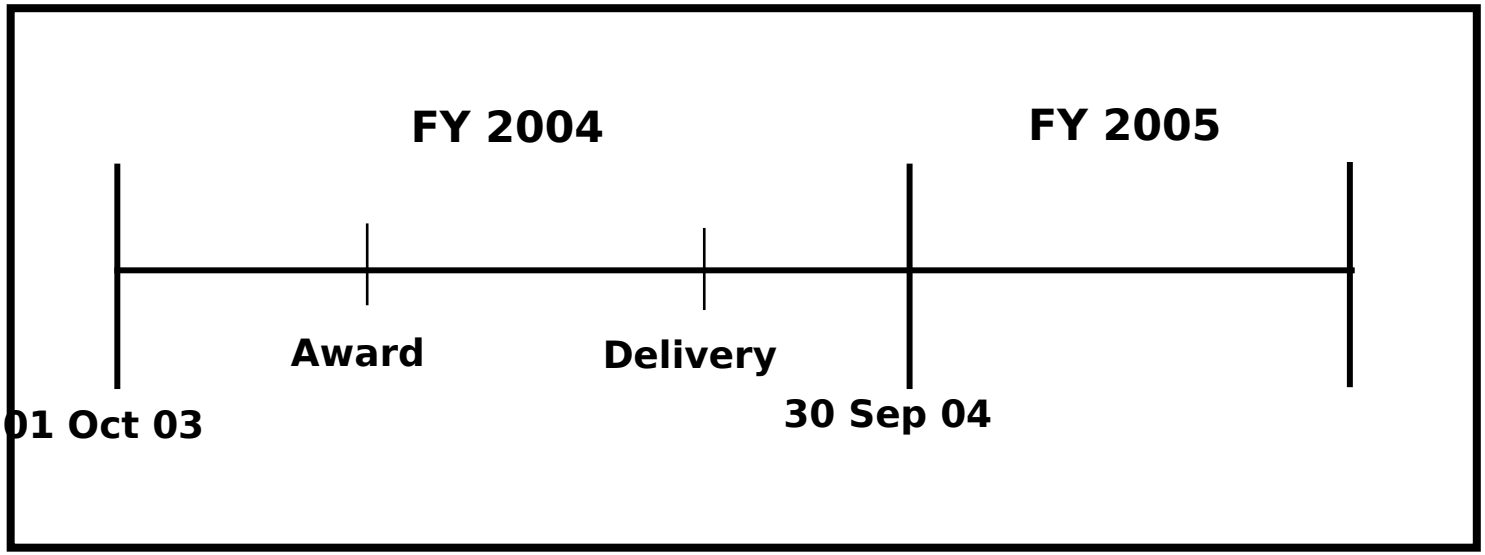
Supplies: In general, an agency must obligate for the fiscal year in which the supplies will be used or consumed.



Supply needs of a future fiscal year are the bona fide needs of the next year (unless an exception applies)

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BFN: Supplies Exception

So What?

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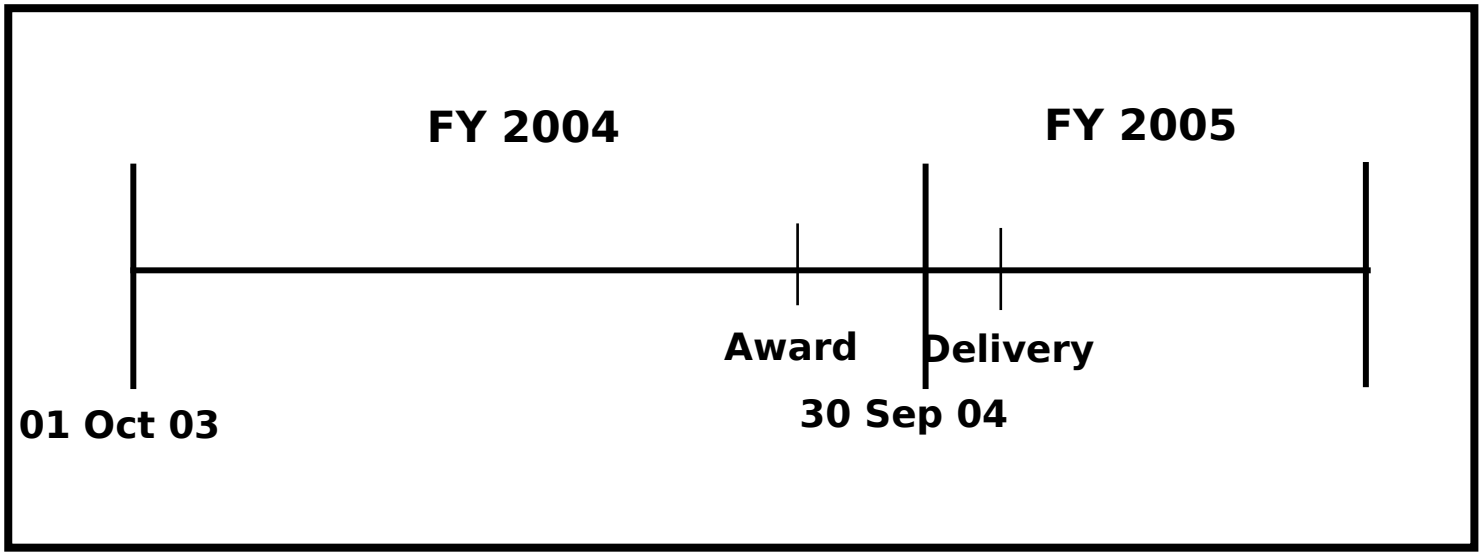
Supplies: Lead-Time Exception: Agency has an FY04 bona fide need but cannot deliver or produce the specialty item within FY 2004.



The intervening period "must not be excessive," and the product cannot be a standard, commercial, readily- available item

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BFN: Supplies Exception

So What?

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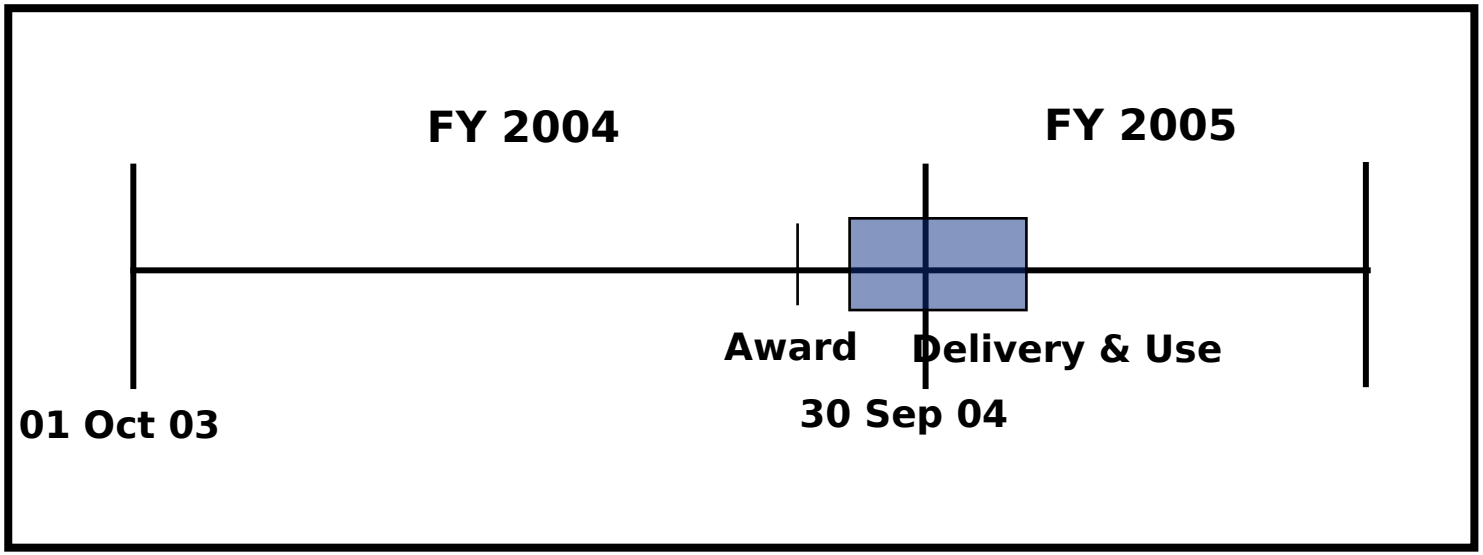
Supplies: Stock-Level Exception: An agency may purchase sufficient supplies to maintain adequate and normal stock levels.



Fiscal year-end stockpiling of supplies in excess of normal usage requirements is prohibited

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BFN: Supplies Exception

So What?

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  ADA

Bottom Line question on Bona Fide Need for all Supplies & Equipment purchases:

If you could receive it today (in the current fiscal year), could you actually use it today?

- **Examples:**
  - **Furniture for a building that hasn't been built yet**
  - **Year's supply of copy paper**

U.S. AIR FORCE

BFN: Application and Exceptions

So What?

Concepts:

- DHP
- Authority
- Obligations
- "The Rule"

Limits on:

- Purpose
  Necessary
  Not prohibited
  Augmenting
- **Time**
- Amount
  ADA

- Supplies
  - General rule
  - Lead-Time Exception
  - Stock Level Exception
- **Services**
  - **General Rule**
  - **Severable Services**
  - **Nonseverable Services**

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BFN: Services

So What?

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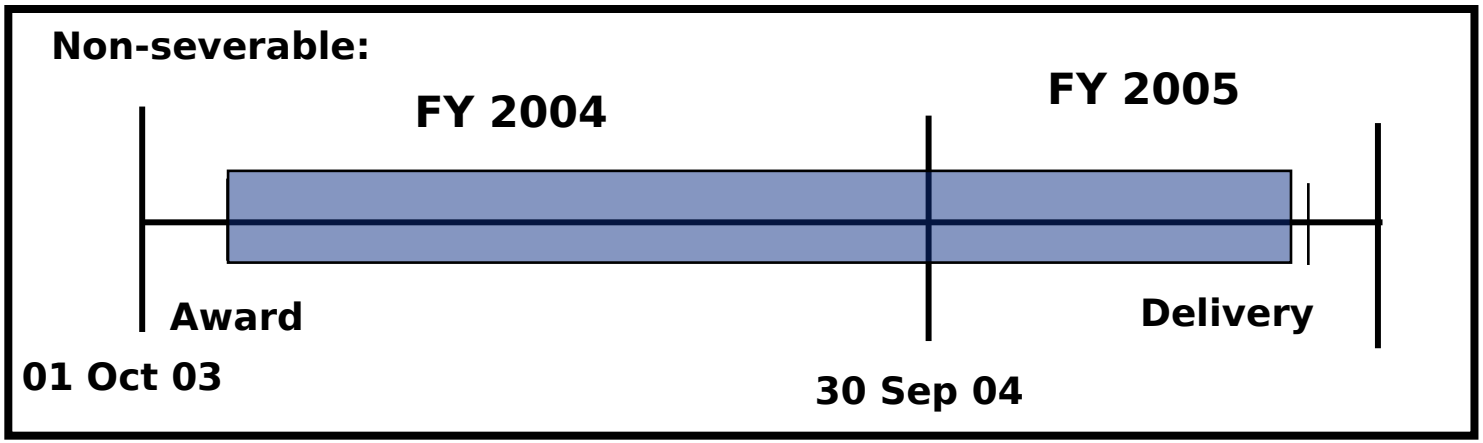
Services: Service contracts fall into two broad categories:

1. **Non-severable: Produces a single, end-product that cannot be subdivided for separate increments of performance.**

Contract "period of performance" may cross fiscal years and extend beyond 12 months.



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BFN: Services

So What?

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Limits on:

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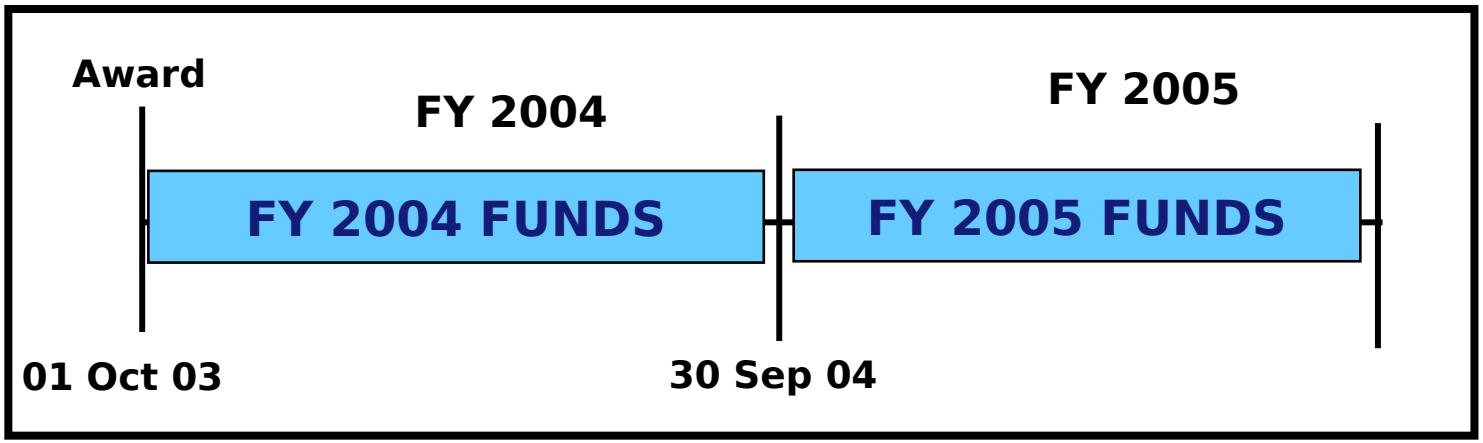
Services: Service contracts fall into two broad categories:

2. **Severable: Can be separated into components that independently meet a separate need of the government.**

In general, contract "period of performance" cannot cross fiscal years and requires funds current at the time of performance.



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BFN: Services Exception

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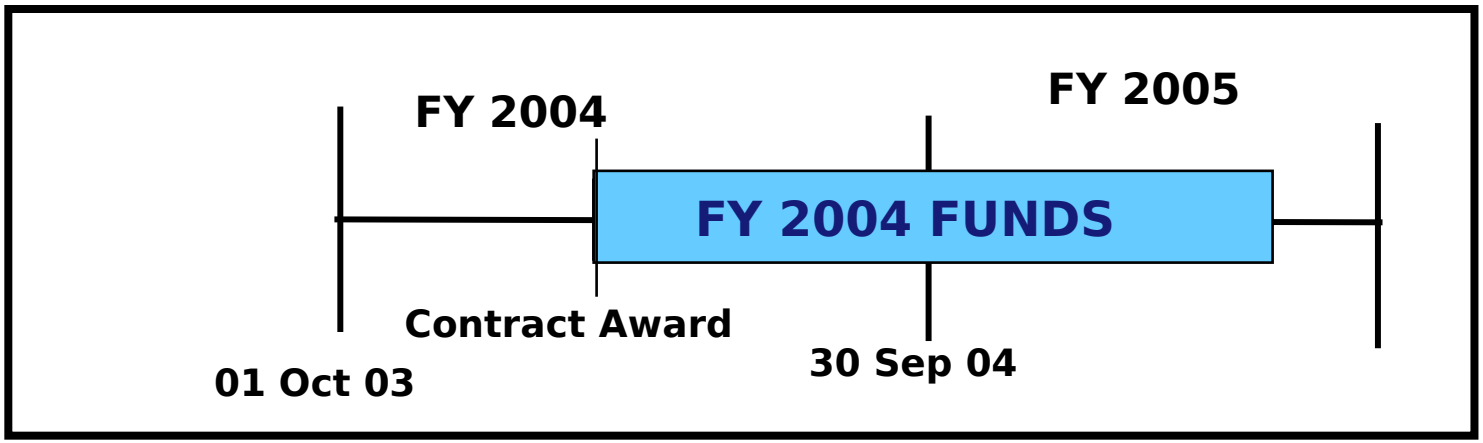
Statutory Services Exception [10 U.S.C. § 2410a] The DoD may enter into a contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if the contract period of performance does not exceed one year.



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Time & the AFMS

So What?

Concepts:

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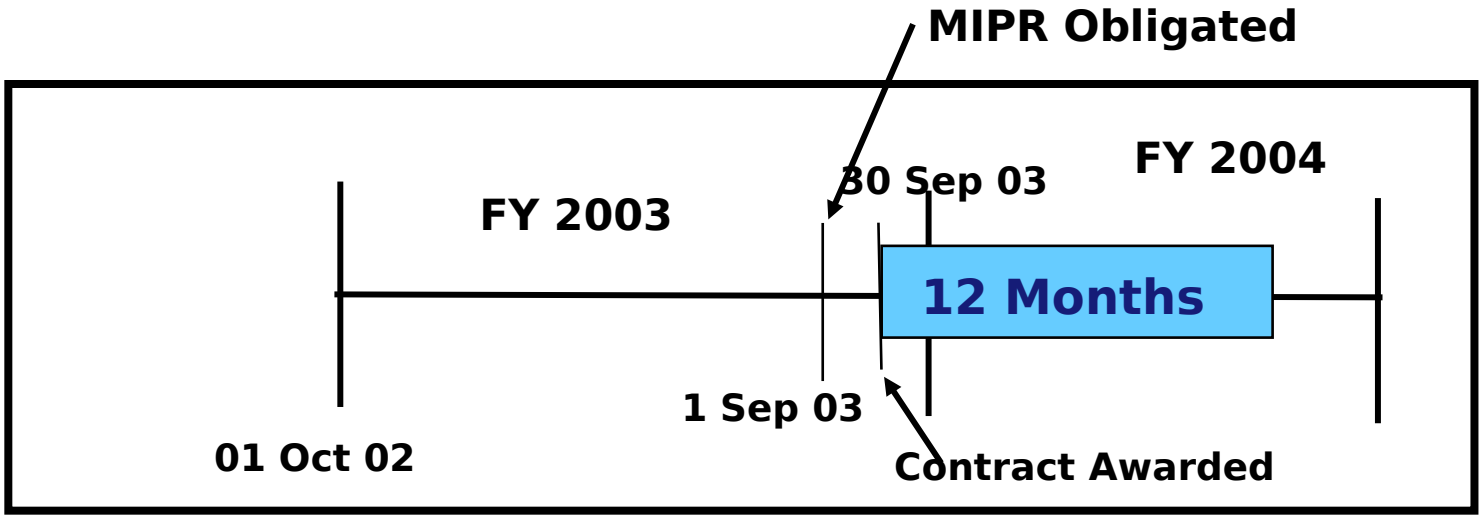
Time Problems in the AFMS:

- **Military Interdepartmental Purchase Requests (MIPRs) – severable service contracts**
  - **MIPRs shouldn't be issued without first having a good understanding of fiscal law**
  - **No "Pre-Buy" (aka "Banking" or "Parking" funds) at end of fiscal year**
  - **AF/SGMC Policy Memo dtd 12 Mar 03 (Explains everything . . . .)**
- **Pharmaceuticals and supplies (end-of-year stockpiling)**
- **Equipment: "If you received it today, could you use it today?"**

U.S. AIR FORCE

Example: Coder Services Contract

- Reimbursable MIPR accepted (obligated) 1 Sep 03
- Severable service contract awarded 15 Sep 03
- Contract period of performance: 15 Sep 03 – 14 Sep 04
- What if contract awarded 1 Oct 03 or later?



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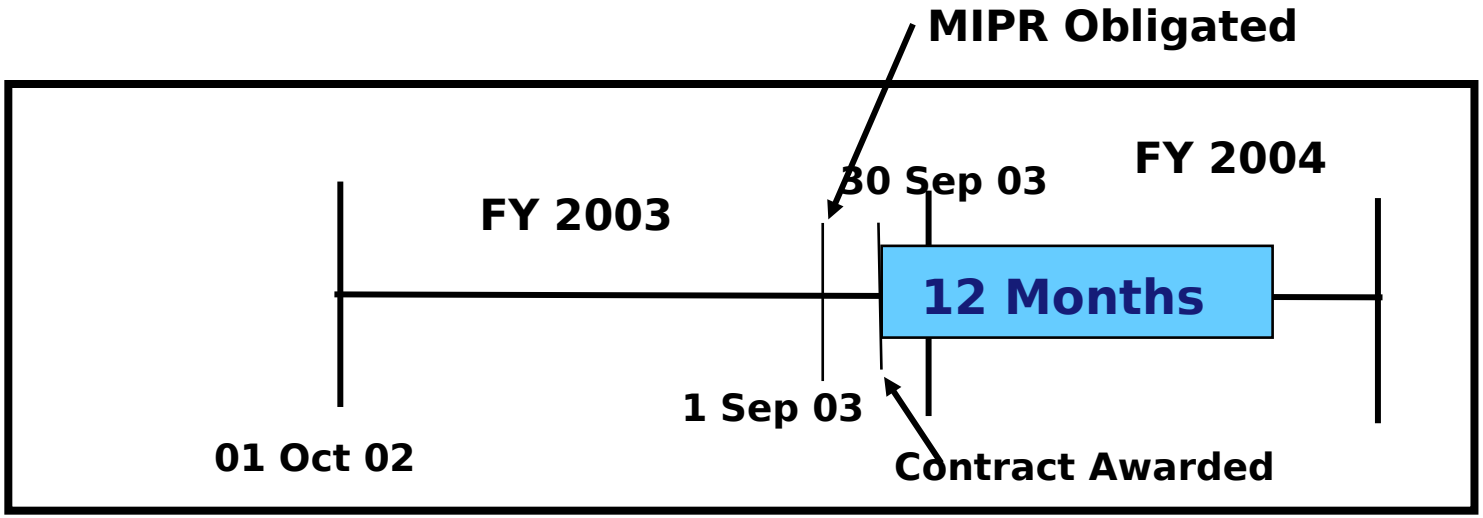
Example: Coder Services Contract

- 1 Sep 03: Obligated = $100K (1,900 hours)
- 1 Mar 04: Employee begins work
- 14 Sep 04: Employee worked 950 hours; $50K Expensed



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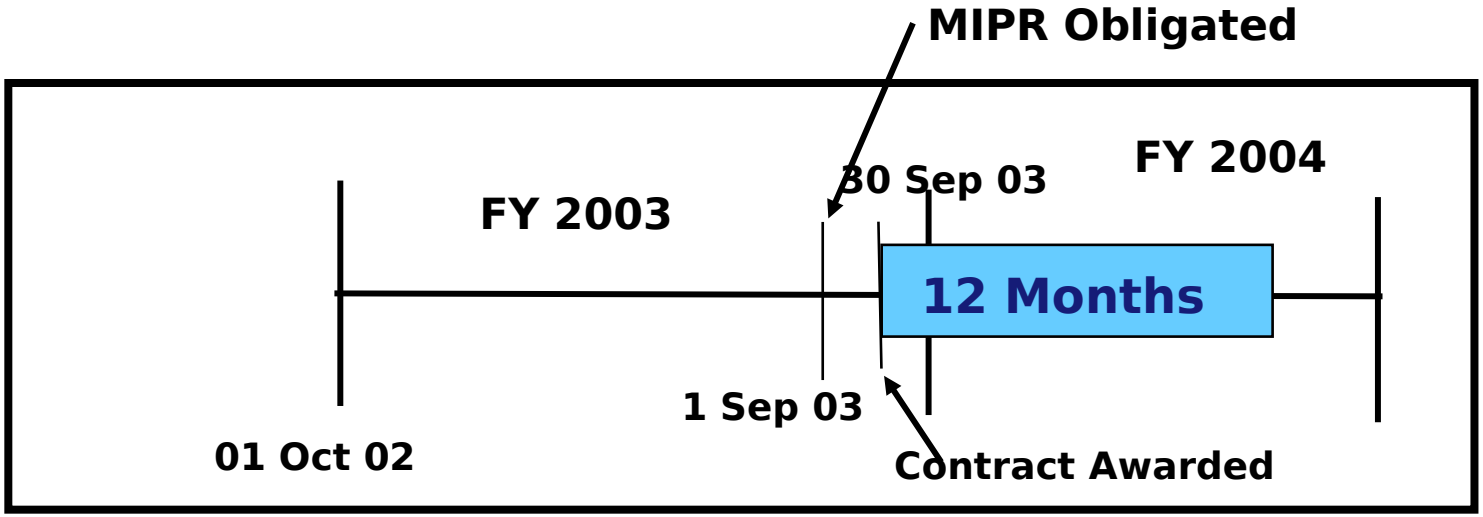
Example: Coder Services Contract

- **Must de-obligate $50K balance and establish a new contract using FY 04 funds and 12 month period of performance**
- **Also, cannot use the $50K balance during the period of performance for a new (FY 2004) bona fide need**



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MIPR Myths

- **Funds issued on a reimbursable MIPR remain available for new obligations for five years after the fiscal year for which they were appropriated.**
  - **FALSE: The performing agency may purchase the goods or services with "no year" funds within a working capital fund (revolving fund); however, the funds cited on the MIPR retain their fiscal identity.**

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MIPR Myths

- Funds issued on a reimbursable MIPR lose their "fund identity" and can be used for purposes other than what Congress intended.
  - **FALSE:** Appropriated funds cited on reimbursable orders are available only for the purposes permissible under the source appropriation and remain subject to the same restrictions.
  - Example: O&M funds cannot be used to purchase items above the investment equipment threshold

Amount: Antideficiency Act

U.S. AIR FORCE

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  ADA

- **Antideficiency Act:** **"The cornerstone of Congressional efforts to bind the Executive branch of government to the limits on expenditures of appropriated funds."**
  - **31 U.S.C. § 1341; 1342 & 1517**
  - **First passed in 1906; evolved over time**
  - **Deals primarily with spending more than you have**

The Antideficiency Act

U.S. AIR FORCE

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- Time
- **Amount**
  - **ADA**

1. **You can't make an obligation in excess of the amount available in the appropriation [31 U.S.C. § 1341]**
2. **You can't obligate the government in a contract or other obligation for the payment of money for any purpose in advance of an appropriation [31 U.S.C. § 1341]**
3. **You can't accept voluntary services without payment from the government (augment your appropriation) [31 U.S.C. § 1342] ("Ratification")**
4. **You cannot make an obligation in excess of an apportionment, or in excess of the amount permitted by agency regulations (allotment) [31 U.S.C. § 1517]**

The Antideficiency Act

U.S. AIR FORCE

So What?

Concepts:

- DHP
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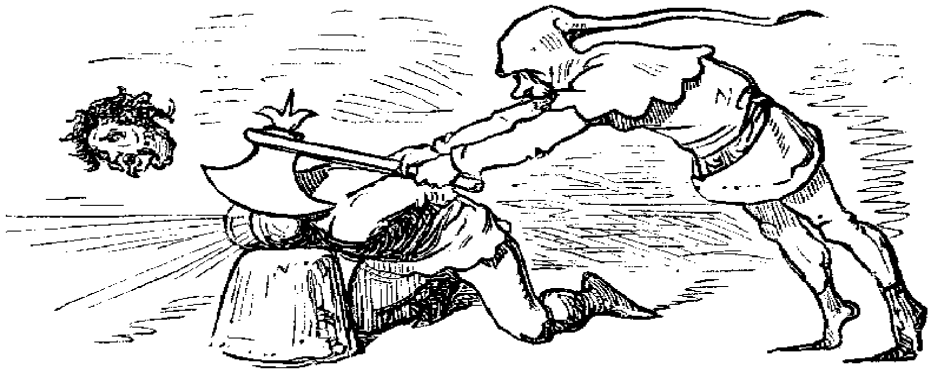
  ADA

- **Antideficiency Act Violations**
  - **The Bad News**
    - **Adverse Personnel Actions & Criminal Penalties**
  - **The Good News**
    - **No one has ever "gone to jail" for an ADA violation**



U.S. AIR FORCE

Fiscal Law Training

- A must for ALL AFMS Resource Managers
- Recommended for everyone else
- Air Force/Army Judge Advocate General's School Annual Distance Learning Course
  - 2nd Week of February every year (4 days)
  - Feb 2004: 2,700+ attendees
  - Contact your Base Legal Office
  - http://www.maxwell.af.mil/au/cpd/jagschool/

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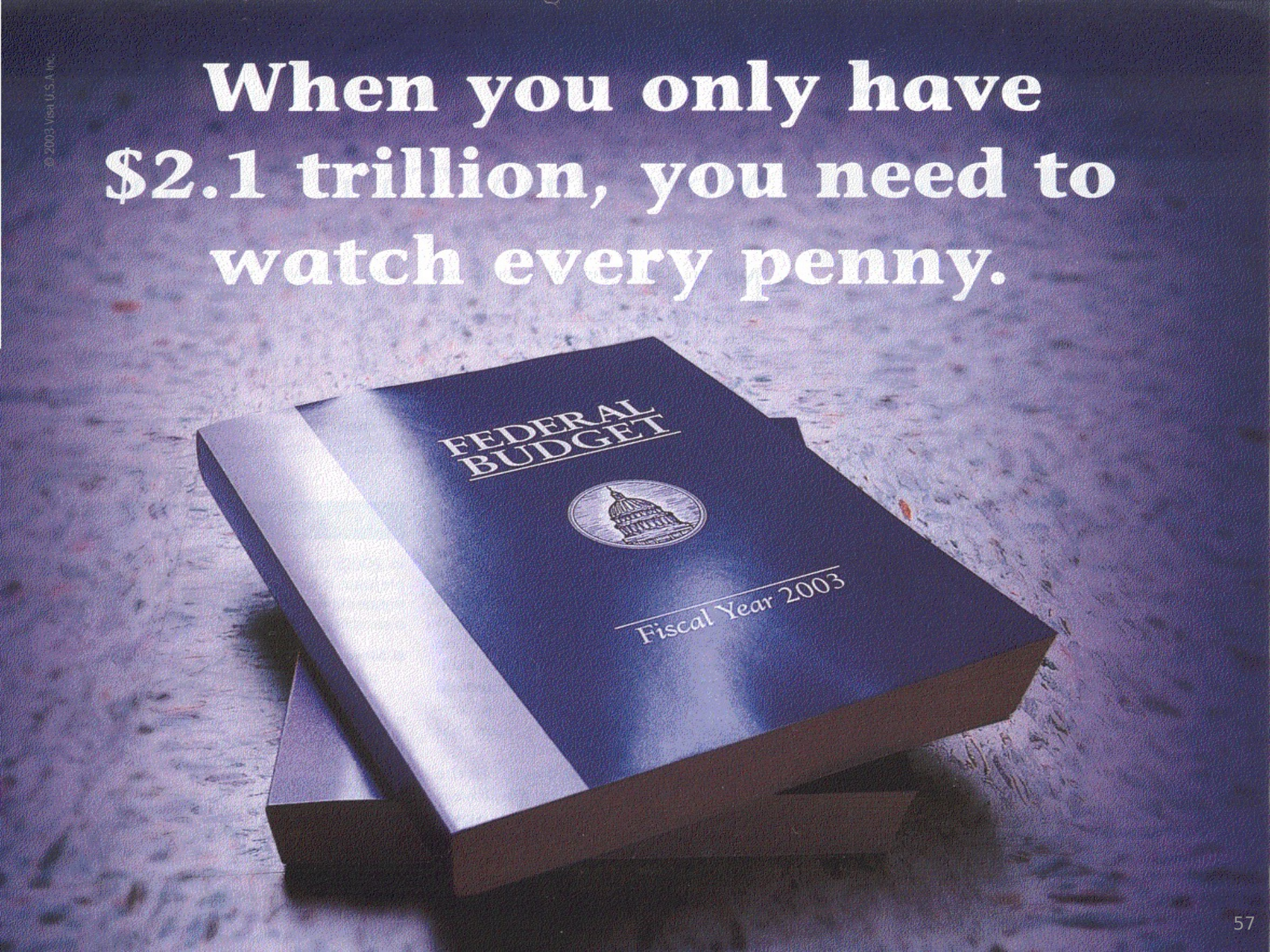
Summary

- Why should I *(a Logistician)* care about fiscal law?
- Important Concepts
  - Defense Health Program Appropriation
  - Budget Authority – What is it?
  - Obligated vs Expensed
  - The Most Important Rule
- Limitations on Authority
  - Purpose, Time & Amount
- Antideficiency Act (ADA)


When you only have $2.1 trillion, you need to watch every penny.
FEDERAL BUDGET
Fiscal Year 2003
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